

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TRUSTEES OF THE NEW YORK CITY	:	
CARPENTERS RELIEF AND CHARITY FUND et al.,	:	
	:	24-CV-8787 (JMF)
Petitioners,	:	
	:	<u>MEMORANDUM OPINION</u>
-v-	:	<u>AND ORDER</u>
	:	
	:	
RATTO CONSTRUCTION CO.,	:	
	:	
Respondent.	:	
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JESSE M. FURMAN, United States District Judge:

On November 19, 2024, Petitioners filed a Petition to Confirm Arbitration. ECF No. 1. On November 21, 2024, the Court set a briefing schedule for Petitioners’ submission of any additional materials in support of the Petition, Respondent’s opposition, and Petitioners’ reply. ECF No. 7. Petitioners served Respondent with the Petition, supporting materials, and the briefing schedule. ECF Nos. 10, 11. When Respondent’s deadline passed without any submission, the Court *sua sponte* granted a courtesy extension to February 11, 2025, and warned that if Respondent failed to file an opposition by that date “the Court will treat the Petition as unopposed.” ECF No. 12; *see also* ECF No. 7. To date, Respondent has neither responded to the Petition nor otherwise sought relief from the Award.

The Court must treat the Petition, even though unopposed, “as akin to a motion for summary judgment based on the movant’s submissions.” *Trs. for Mason Tenders Dist. Council Welfare Fund, Pension Fund, Annuity Fund & Training Program Fund v. Capstone Constr. Corp.*, 11-CV-1715 (JMF), 2013 WL 1703578, at \*2 (S.D.N.Y. Apr. 19, 2013) (discussing in

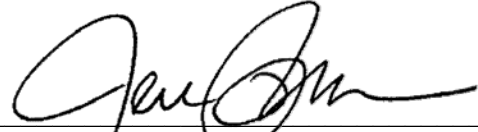
depth the legal standards for resolving unopposed petitions to confirm arbitration awards). After reviewing the Petition and the supporting materials, the Court finds that there is no genuine issue of material fact precluding summary judgment as to all portions of the Award, as the Arbitrator's decision provides more than "a barely colorable justification for the outcome reached." *Id.* at \*3 (internal quotation marks omitted). Nor is there any justification under Section 10(a) of the Federal Arbitration Act for vacating the Award.

The Court grants Petitioners' request for attorneys' fees and costs but modifies the requested pre-judgment interest rate. *See Int'l Chem. Workers Union (AFL-CIO), Local No. 227 v. BASF Wyandotte Corp.*, 774 F.2d 43, 47 (2d Cir. 1985) ("[W]hen a challenger refuses to abide by an arbitrator's decision without justification, attorney's fees and costs may properly be awarded." (internal quotation marks omitted)). Here, Petitioners have met their burden of proving the reasonableness and necessity of hours spent, rates charged, and litigation costs incurred. The Court also grants Petitioners' request for pre-judgment interest, *see, e.g., Waterside Ocean Navigant Co. v. Int'l Navigation Ltd.*, 737 F.2d 150, 154 (2d Cir. 1984) (adopting a "presumption in favor of pre-judgment interest"), but at a rate of 9% rather than Petitioners' requested rate of 10.5%. "District courts have discretion to set prejudgment interest rates," *New York City Dist. Council of Carpenters v. Allied Design & Constr., LLC*, 335 F. Supp. 3d 349, 353 (E.D.N.Y. 2018), and "[t]he common practice among courts within the Second Circuit is to grant interest at a rate of nine percent, the rate of pre-judgment interest under New York State law," *Herrenknecht Corp. v. Best Rd. Boring*, No. 06-CV-5106 (JFK), 2007 WL 1149122, at \*3 (S.D.N.Y. Apr. 16, 2007) (internal quotation marks omitted). Here, Petitioners have provided no reason to depart from this common practice.

Accordingly, the Court grants Petitioners' unopposed Petition to confirm the Award, although it grants Petitioners pre-judgment interest at a rate of only 9%. Petitioners are directed to file a Proposed Judgment, consistent with this Memorandum Opinion and Order, using the ECF Filing Event "Proposed Judgment," by no later than **February 26, 2025**.

SO ORDERED.

Dated: February 12, 2025  
New York, New York



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JESSE M. FURMAN  
United States District Judge